

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No 481 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE Y.B.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

GEB,DO.VARACHA ROAD,SURAT

Versus

M/S RK RAYON DYEING & PRINTING MILLS

Appearance:

MR MD PANDYA for Appellant

MR SB VAKIL for Respondent

CORAM : MR.JUSTICE Y.B.BHATT

Date of decision: 04/09/98

ORAL JUDGEMENT

1. This is an appeal under Order 43 rule 1 CPC at the instance of the Gujarat Electricity Board which is the original defendant in the suit. The plaintiff-respondent had filed suit on various grounds, in substance challenging the disputed bill issued by the defendant-Board to the plaintiff. In the said suit, an injunction application was filed at exh. 5. The trial court after having heard the parties granted the

injunction application and restrained the defendant-Board from disconnecting the electric supply.

2. It is this order granting the injunction against the defendant which is the subject matter of the present appeal.

3. At the outset, it may be noted that disconnection was threatened for non payment of the disputed bill, which was based upon a finding of the defendant-Board that it was a case of theft of electricity on the part of the plaintiff. In this context, a Division Bench of this Court has laid down in a comprehensive manner, the principles to be followed by courts while dealing with such suits where claims by the licensee (supplier of electricity) are resisted by the consumers, both in cases of theft and/or other cases of disputed bills. This is the decision in the case of Kiran Industries v. Gujarat Electricity Board, decided by a Division Bench of B.N. Kirpal, Chief Justice (as he then was) and A.N. Divecha, J., reported at 1995 (2) GLH P. 1. In this context, the Division Bench has laid down that Courts of law when exercising power under Order 39 Rule 1 & 2 CPC ought not to grant exparte ad interim reliefs against the disconnection of electric supply for non payment of a bill, except in the rarest of rare cases. Furthermore, it also lays down that, even otherwise, no interim relief against the disconnection of electric supply should be granted without payment of the bill in dispute, and that the consumer should be directed to pay the entire bill in question to the supplier of electricity before considering the claim of the consumer for interim relief against the disconnection for non payment.

4. In view of this clear position of law, it is obvious that the trial court was in error in granting an unconditional injunction against the appellant-Board. However, this Court is required to note that when the impugned order was passed, the aforesaid decision of the Division Bench of this Court had not been rendered. Secondly, no useful purpose is likely to be served at this stage by reversing the said decision and then imposing conditions upon the plaintiff for continuation of the interim relief. Learned counsel for the appellant does not contest this practical aspect of the matter in the particular facts and circumstances of the case. In the premises aforesaid, the interest of justice would best be served by directing the trial court to decide the pending Special Civil Suit No. 65/94 as expeditiously as possible and in any case, not later than 30th June, 1999.

5. Before parting with the matter, I am required to observe at the instance of learned counsel for the appellant (although the same is not strictly necessary) that all observations made by the trial court in the impugned order and all findings of fact expressed as such in the impugned order must be taken and read as prima facie findings, and shall not in any way influence the trial court when deciding the suit on merits, in accordance with the evidence on record and application of correct law to such facts. The aforesaid appeal is accordingly disposed off with no order as to costs.

6. Direct service permitted.

Amp/